IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5706 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

S T KARMACHARI MANDAL

Appearance:

1. Special Civil Application No. 5706 of 1989
MR HARDIK C RAWAL for Petitioner No. 1
RULE NOT RECD BACK for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. Heard Mr. H.C. Rawal learned advocate appearing on behalf of the petitioner Corporation.

2. Notice of Rule has been issued to the respondent but he has not remained present and he has not engaged

any advocate to appear in the present proceedings. Therefore, the matter has been taken for hearing today in absence of the respondent.

3. The petitioner Corporation has challenged the validity and legality of the award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.500 of 1985 dated 26-9-1988 whereby the said Reference was partly allowed and the punishment of placing the concerned workman four stages below his original pay scale shall continue till the date of publication of the award and from the date of the publication of the award, the concerned workman was given increments, if any, as if there is no punishment inflicted upon him.

4. At the time of issuing Rule this Court has passed the order, which reads as under :

> "Heard the learned advocates appearing for the parties as regards interim relief. In the facts of the case it would not be proper to stay the operation and implementation of the award. If the stay is vacated, all that would happen will be that the respondent workman would receive some more amount as and by way of wages and other benefits. In case the petitioner Corporation succeeds in the petition, it will always be open to the petitioner to request the Court for giving appropriate direction with regard to restoration of the amount which may be required to be repaid by the workman pursuant to the final order that may be passed by the Court. Be it noted that the respondent workman is in service of the Corporation and therefore there will not be any difficulty in getting the amount restored if in future any such eventuality arises.
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> Having regard to the overall facts and circumstances of the case, ad interim relief granted earlier on August 8, 1989 is vacated. The petitioner Corporation is directed to calculate the amount payable to the workman pursuant to the direction given in the award immediately and make the payment of the same latest by June 30, 1993 and report compliance of the same to this Court. With the aforesaid direction ad interim relief granted earlier stands vacated. Petition be notified on admission board on June 30, 1993, for notifying compliance of the aforesaid direction."

5. Mr. Rawal learned advocate appearing on behalf of the petitioner Corporation submitted that the respondent No. is that on 5-5-1978 when his bus was plying between Chandara to Himatnagar it was found that the respondent no. 2 had collected fare from certain passengers but had not issued tickets to them. Thereafter departmental inquiry was held against the respondent no. 2 and after completion of the departmental inquiry the competent authority inflicted punishment reducing him to the minimum of his pay scale. Against the finding of the competent authority the appeal was filed before the Appellate Authority and the Appellate Authority by the order dated 22-5-1980 substituted the penalty by reducing him by four steps in his scale of pay. Against the order of the Appellate Authority dated 22-5-1980 the respondent no. 1 Union invoked the jurisdiction of the Industrial Tribunal, Ahmedabad by seeking Ref. (IT) No. 500 of 1985 and after hearing both the parties, the Industrial Tribunal has come to the conclusion that the finding recorded by the competent authority is correct. The Tribunal has also come to a conclusion that the misconduct committed by the respondent no. 2 is a serious misconduct and therefore the Tribunal modified the punishment.

6. I have considered the submissions made by the learned advocate Mr. Rawal appearing on behalf of the petitioner Corporation. Mr. Rawal has submitted that the Industrial Tribunal has recorded finding that serious misconduct is committed by the respondent no. 2 workman and considered the punishment inflicted against the respondent no. 2 workman reducing him four steps in his scale of pay having recurring effect in the salary which remained continued till the date of his retirement and that is why the Tribunal has modified the punishment to the effect that the punishment which has been imposed by the order dated 28-12-1979 will remain in force upto 26-9-1988 and that punishment is considered by the Tribunal as sufficient punishment. The Industrial Tribunal has given reasons in support of its conclusion that the punishment awarded to the respondent no. 2 conductor is harsh one. It appears that the respondent no. 2 workman was placed in the original pay scale by the order dated 28-12-1979. It also appears that when the incident took place, the concerned workman has practically completed 8 years' service and, therefore by the order as above, there was a loss of Rs.40,000/- plus D.A. There is no exact detail to show what was the D.A. but it is an admitted fact that the D.A. has increased year after year, therefore, from year 1978, the concerned workman is loosing substantial amount of wages and it is

practically ten years now that this punishment is in operation. It also appears that the concerned workman had a number of defaults to his credit. Even after this punishment, he appears to have been punished for not issuing the tickets to the passengers in the year 1981. Therefore, the Tribunal has modified the punishment to the effect that the punishment awarded to the respondent no. 2 workman to continue till the publication of the award and now to release his increments as if there is no punishment in operation.

7. I have considered the submissions made by the learned counsel Mr. Rawal for the petitioner and perused the material on record and also considered the interim order passed by this Court on 28-4-1993 wherein this Court has granted the benefits to the respondent No. 2 workman and directed the petitioner Corporation to pay the arrears which is available to the respondent No. 2 workman pursuant to the award of the Tribunal subject to the condition that if the respondent no. 2 workman looses the matter then he has to pay the amount back to the petitioner Corporation and considering that aspect the Tribunal has given reason in support of its conclusion. The adverse effect of four stages below to his original scale of pay has been taken into consideration by the Tribunal and more than 10 years this punishment has remained in existence. Therefore, according to my opinion, the Industrial Tribunal has not committed any error in passing the impugned award. The Tribunal has also not committed any jurisdiction error. The Tribunal has not committed any procedural irregularities which require interference by this Court while exercising extra ordinary power under Article 226 and 227 of the Constitution of India. There is no substance in the petition. Therefore, the present petition is dismissed. Rule is discharged, with no order as to costs.

12/4/2002 (H.K. Rathod, J.)

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/JVSatwara/